

CONSTITUTION

of the

TARANAKI FREE KINDERGARTEN
ASSOCIATION (INC)

trading as



Kindergarten
Taranaki

Te Putahi Kura Pūhou o Taranaki

23 October 2014

CONTENTS

- 1. NAME**
- 2. REGISTERED OFFICE**
- 3. OBJECTS**
- 4. DEFINITIONS**
- 5. MEMBERSHIP**
- 6. VOTING AT GENERAL AND SPECIAL MEETINGS**
- 7. CHAIRPERSON OF GENERAL MEETINGS**
- 8. ADJOURNMENT**
- 9. NOMINATIONS FOR ELECTION OF BOARD MEMBERS AND ELECTED
STAFF MEMBER**
- 10. BOARD**
- 11. POWERS OF THE BOARD**
- 12. ASSOCIATION EMPLOYEES**
- 13. ANNUAL GENERAL MEETINGS**
- 14. SPECIAL GENERAL MEETINGS**
- 15. PECUNIARY GAIN**
- 16. COMMON SEAL**
- 17. ACCOUNTS**
- 18. FINANCIAL YEAR**
- 19. RULES**
- 20. AFFILIATION**
- 21. WINDING UP**
- 22. INTERPRETATION**
- 23. INDEMNIFICATION OF BOARD MEMBER**

1. Name of Association

TARANAKI FREE KINDERGARTEN ASSOCIATION (INCORPORATED) (herein known as the Association, Kindergarten Taranaki or TFKA).

2. The Registered Office

The registered office of the Association shall be at such a place as the Board shall from time to time determine. The Chief Executive will notify the Registrar of Incorporated Societies of any change of location of the registered office.

3. Objects

The objects of the Association shall be to:

- a) To provide and promote education for the benefit of young children;
- b) To administer and control Association Kindergarten services in the Taranaki area; and
- c) To establish new kindergarten services in the Taranaki area; and
- d) To do all such lawful things as are conducive to the attainment of the objects of the Association and the furtherance of early childhood education in New Zealand.

4. Definitions

Association means the Taranaki Free Kindergarten Association (Incorporated).

Association Kindergarten means those Kindergarten services provided by the Association. Annexure 3 provides a list of the Association Kindergartens as at the day of the approval of this constitution, notwithstanding that Annexure 3 will be updated from time to time to include any additional kindergarten services to be provided by the Association.

Board means the properly elected, appointed or co-opted Governing Board of the Association (including for the avoidance of doubt the Elected Staff Board

Member), who shall have the role of Governance and shall set policy.

Board Meeting means a meeting of the Board.

Board Member means a person properly elected or appointed to the Board pursuant to this Constitution and, for the avoidance of doubt, includes the Elected Staff Board Member.

Board Chair means the Board Member elected to such a position by the Board by operation of clause 10.4. This person shall also be appointed to act as the chairperson in any meeting.

Chairperson means the Board Chair or such other person as selected by operation of Clause 7.1.

Chief Executive means a person employed by the Association under that title for the purposes of managing the day to day operations of the Association on such terms and conditions as set out by the Board in accordance with the Association policies and/or by the terms of his/her employment agreement.

Committee Member means any person who is a member of any Sub, Establishment or Local Committee.

Control means to make and implement decisions in respect to the provision of Association services and to oversee the implementation of those decisions.

Elected Staff Board Member means an appointed permanent Association employee with full speaking and voting rights at all Board and General Meetings, elected bi annually or such other time if the position is vacated by Association employees (excluding Board Members and Ex-Officio Officers of the Board who cannot be elected or vote on the election).

Electronic Voting means a vote cast by a Member via electronic methods prior to a General or Special Meeting pursuant to Clause 6.6.

Establishment Committee means a committee which acts in conjunction with the Board to fundraise and establish a new association kindergarten in line with Association policies.

Ex-Officio Officer of the Board means the Chief Executive.

Extraordinary Contribution in respect of a Life Member means a Parent Member, Board Member or former Association employee who has demonstrated a combination of two or more of the following:

- dedication to the objectives of the association,

- a high level of commitment and involvement in the Association,
- genuine interest in the significance and value of early childhood education or all Association kindergarten communities,
- endeavours on behalf of the Association above and beyond normal expectations,
- they have been inspired and inspiring,
- they are held in high regard by groups within the Association,
- their endeavours have benefited the Association,
- or their service to the Association has been outstanding.

Financial Year means the financial year of the Association as per clause 19.

Free Kindergarten means a kindergarten free from discrimination and, subject to places being available, accessible to any children regardless of their race, creed, colour, physical or mental ability, the parents/whanau's ability to pay or other such meaning as defined in the laws and relevant regulations of New Zealand.

General Meeting means an Annual General Meeting provided for in Clause 14 or a Special General Meeting provided for in Clause 15.

In Committee Meeting means that part of a Board Meeting held according to the procedures set out in Clause 10.9.

Kindergarten Community shall comprise parents, caregivers and whanau of an Association Kindergarten.

Life Member means a person who has been awarded life membership in recognition of their extraordinary contribution to the Association.

Local Committee means those members of a Kindergarten Community excluding employees who undertake, in line with Association policies and guidelines, such responsibilities as may from time to time be delegated by the Board. A Local Committee may or may not refer to itself as a Local Committee.

Member means any Parent Member, Board Member or Life Member.

Parent Member means any parents, guardians or designated parental caregivers who currently have a child on the roll or waiting list of an Association Kindergarten.

Quorum – the minimum number of Board Members required to be present at Board meetings in order for any valid business to be transacted is 4. Where the number of Board Members is an odd number the Quorum shall be half of the

Board Members and then rounded up. Where the Board is an even number the Quorum shall be half of the Board members plus one. The minimum number of people for any other sub, establishment or local committee shall be determined in the same manner as a Quorum is determined for Board meetings. In each instance the Quorum must be present within 30 minutes from the scheduled commencement time for the meeting. The Quorum for any General Meeting is a minimum of 15 Members present and eligible to vote.

Subcommittee means any committee formed under Clause 10.7.

5. Membership

5.1 Membership of the Association will be open to:

- a. any Parent Member, Board Member and Life Member; and
- b. to any company or person who supports the objectives of the Association and whose application for membership has been accepted by the Board and confirmed by the Chief Executive. The Board will have the right to decline a membership application without giving any reason for such decision, other than on a confidential basis to the individual concerned.

5.2 Each Member shall be entitled to attend, speak and have one vote at all General Meetings.

5.3 For the avoidance of doubt, any Parent Member of the Association shall be deemed to have ceased being a Member when they no longer meet the definition of Parent Member in Clause 4 and has not already been confirmed as a Member pursuant to clause 5(1)(b).

5.4 Any Member may resign from the Association by giving the Chief Executive written notice of that Member's intention to do so. Resignation shall not extinguish any liabilities which arose during the period of membership.

5.5 Any Member who acts in a manner deemed contrary or prejudicial to the interests of the Association may be suspended from membership or have their membership terminated and of this the Board shall make the decision. No decision to suspend or terminate the membership of any Member will be made until the Member concerned has had the opportunity to respond.

- 5.6 Life Membership may be conferred upon any person who has made an extraordinary contribution to the Association on the unanimous recommendation of the Board and confirmed by a majority vote at a General Meeting of the Association.
- 5.7 Life Members shall have the right to attend and speak at all General Meetings of the Association.

6 Voting at General and Special Meetings

- 6.1 Voting at General Meetings shall be conducted in the following way:
- a. Each Member shall be entitled to one vote either in person or, if determined appropriate by the Board, via electronic voting methods.
 - b. The Chairperson shall determine whether there is a Quorum at the beginning of each General Meeting and the voting numbers of those present.
 - c. Subject to Clause 6.6 the mode of voting at all General Meetings shall be by show of hands, or by voice. Any three (3) members present can require a ballot be taken.
 - d. Voting for elected Board positions shall still occur, even if fewer nominations have been received than positions available.
 - e. In the event of a ballot, all voting papers will be collated at the General Meeting by two (2) scrutineers who are nominated on the night from the attendees of the meeting. The results of the ballot will then be delivered by the Chairperson to the meeting attendees. The scrutineers shall include all validly cast electronic votes in the ballot.
- 6.2 At all meetings the Chairperson shall have one vote, and shall in the case of a tie have a casting vote.
- 6.3 Voting at meetings shall be by a simple majority, save where a higher percentage is required pursuant to this Constitution.
- 6.4 The Chairperson at any meeting shall declare whether any resolution submitted at such meeting has been carried or by a particular majority, lost. An entry to that effect in the Minute Book of the Association shall be conclusive evidence to the fact.
- 6.5 Any elected or appointed Board Member, including, for the avoidance of

doubt, the Elected Staff Board Member, shall vote in accordance with their opinion on any matter.

- 6.6 The Board may accept electronic votes from its Members on matters the Board considers appropriate to be voted on electronically. In respect to such matters the Board shall cause an agenda with voting options to be circulated to those Members registered to vote electronically prior to the meeting.

7. Chairperson of General Meetings

- 7.1 At all General Meetings the Board Chair shall preside as Chairperson of the meeting but should the Board Chair not be present the chair shall be taken by a Board Member or by a Member appointed by simple majority of the Members present and entitled to vote.

8. Adjournment

- 8.1 The Chairperson of any meeting properly convened may, with the simple majority consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

9 Nominations for Election of Board Members and Elected Staff Board Member

- 9.1 Nominations for vacant Board positions or a vacant Elected Staff Board Member position are to be called for at least thirty (30) days prior to the Annual General Meeting and nominations must be received no later than fourteen (14) days prior to the date of the Annual General Meeting.
- 9.2 Each nomination received must be:
- a on the prescribed nomination form.
 - b have a nominator and seconder both of whom must be Members of the Association or, in the case of the Elected Staff Board Member nominated and seconded pursuant to Clause 9.8; and
 - c be signed by the nominee, the nominator and the seconder.
- 9.3 With the exception of the Elected Staff Board Member, nominees must be

Members of the Association. Any spouse, de facto partner, civil union partner, husband or wife of an Association employee is not eligible to be nominated, appointed or co-opted to a position on the Board.

- 9.4 Nominations received will be disseminated to Members no later than seven (7) days prior to the date of the Annual General Meeting.
- 9.5 Nominees must, at the time of nomination, attest that they meet the fit and proper person criteria described in Part 1, No 8 of the Education (Early Childhood Services) Regulations 2008. If, following election it is determined that the nominee does not meet the fit and proper person criteria or is found to have brought the Association into disrepute the Board may by majority vote remove them from their position on the Board.
- 9.6 Nominations will not be accepted from the floor at the Annual General Meeting or Special General Meeting.
- 9.7 The Elected Staff Board Member holds the position for a two year term and is eligible for re-election for a maximum of three (3) years.
- 9.8 Each appointed permanent or long term relieving Association employee excluding casual employees and Ex-Officio Officers of the Board, shall be entitled to vote for the Elected Staff Board Member.
- 9.9 Election of the Elected Staff Board Member shall be by way of majority ballot. A ballot may be conducted by post, fax or electronic methods and received by the Chief Executive prior to the Annual General Meeting.
- 9.10 The Elected Staff Board Member's term will immediately cease to hold that position if they either resign the position or their employment with the Association ceases during the term. Should the position of Elected Staff Board Member become vacant during the term an election will then be held in accordance with Clause 9.9 to fill the position until the completion of the current term.

10. Board

- 10.1 The Board shall comprise up to seven (7) people, including the Elected Staff Board Member and subject to Clause 10.15 shall sit for a two year term.
- 10.2 The Board may appoint a person or persons to fill vacancies on the Board. Subject to Clause 10.17 any person so appointed will retire at the Annual

General Meeting immediately following his or her appointment.

- 10.3 The Board may co-opt additional persons with specific skills to assist in the attainment of the objects of the Association notwithstanding that the person co-opted may not be a Member of the Association. Any person so co-opted will have no voting rights. The period of co-option shall be at the discretion of the Board.
- 10.4 The Board may continue to act, notwithstanding any vacancy, provided that the vacancy or vacancies do not prevent the Board from achieving a Quorum to conduct its meetings. In the event there are less than four Board Members resulting in the Board being unable to form a Quorum New Zealand Kindergartens Incorporated ("NZKI") will appoint however many additional persons as are needed to the Board of the Association to enable the Board to form a Quorum. That person (or if more than one those persons) so appointed by NZKI shall continue to hold the position of Board Member until such time as replacement Board Members have been either elected to the Board at General Meeting or Board Members have been appointed or co-opted pursuant to clauses 10.2 and 10.3 respectively
- 10.5 At the first Board Meeting held after the Annual General Meeting the Board shall elect a Board Chair to serve a one (1) year term. The Elected Staff Board Member is ineligible to serve as Board Chair.
- 10.6 The Board shall have a minimum of eight (8) Board Meetings in any one year and more at its discretion.
- 10.7 The Board may establish sub committees under the delegated authority of the Board as it deems necessary for such purposes that the Board, in its discretion shall determine.
- 10.8 Meeting fees shall be paid to Board Members for all Board Meetings and other meetings attended and in relation to any other Board business sanctioned by the Board. A variation to such fees must be passed by vote at any General Meeting.
- 10.9 Save where Board Meetings become In Committee Meetings, Members and Association employees may attend Board Meetings and any other person may attend by invitation.
- 10.10 Any Board Member may place a motion of no confidence in the Board Chair.
- 10.11 The Board Chair shall immediately step down from the position of Board Chair if the motion of no confidence is passed by a two thirds (2/3) majority of Board

Members.

- 10.12 If the Board Chair has resigned or otherwise been removed from the position of Board Chair during the term the Board shall elect a new Board Chair at the following Board Meeting.
- 10.13 The Chief Executive is an Ex Officio Officer of the Board. He or she shall have the right to attend all meetings, be consulted and heard at such meetings and present the views of staff or Members as they may be requested to but shall have no voting rights. Any other person in a management role will attend Board Meetings upon instruction from the Board and will hold speaking but no voting rights.
- 10.14 Any Board Member shall declare any potential conflict of interest prior to discussion of the matter commencing. Where, in the opinion of the Board, a Board Member has a conflict of interest in any matter being considered by the Board, that Member shall have no right to vote on any motion in relation to that matter and may be asked to leave the meeting and not take part in any discussion on the matter.
- 10.15 Notwithstanding any other provision in this Constitution three (3) Board Members must continue as Board Members following an Annual General Meeting to serve on the Board notwithstanding that this may result in a Board Member serving a term exceeding two years but not exceeding a term of three (3) years. In the event more than three (3) Board members wish to continue the Board Chair shall determine which Board Members are to continue notwithstanding that the Board Chair's decision may result in a Board Member serving a term of less than two (2) years. At each Annual General Meeting any remaining Board position will be filled by those Nominees that receive the greatest number of votes. This shall not preclude any vacant Board position being filled by a Nominee following resolution at a Special General Meeting.

11 Powers of the Board

- 11.1 Subject to the direction of the Members in a General Meeting, the policies of the Association shall be determined and the governance and control of the affairs of the Association shall be vested in the Board. The Board shall exercise all powers and do all acts and things which may be exercised and done by the Association and which are not expressly directed or required to be exercised or done by the Association in a General Meeting.
- 11.2 Without prejudice to the general powers of the Board, it is hereby expressly directed that the Board shall be entrusted with and may exercise and perform

all the following powers and duties:

- a. From time to time take all steps and proceedings and do all acts and things which it considers advisable for carrying into effect the objects of the Association.
- b. Subject always to employment law to appoint and employ and in its absolute discretion dismiss, remove or suspend such servants or agents as it may from time to time think fit, and determine duties and power of such servants or agents and to fix their salaries for emoluments and period of engagement. To institute, conduct, defend, compound or abandon any actions, legal proceedings and demands by or against the Association or otherwise concerning the affairs of the Association.
- c. To receive and sign and give effect to receipts and discharges for debentures, dividends or securities for money, debts, goods, chattels and effects which shall come into its hands or of which the Association or Board may become possessed or entitled to or which may become due payable or transferable to the Association or Board from any person or persons, corporation, company or Government.
- d. From time to time to invest, control and deal with all or any of the funds or moneys of the Association in such manner as it shall think fit and from time to time in its absolute discretion to vary any such investment or realise the amount invested therein and to deposit or bank all or any of the funds or moneys of the Association in such Bank or Banks as the Board may from time to time determine and to withdraw such funds or moneys from time to time.
- e. To draw, sign, accept, endorse or otherwise deal with cheques, dividends, warrants, interest notes, promissory notes or other instruments payable to the Association or the Board in such manner as the Board may think fit and to affix the Seal of the Association as herein provided by Clause 17 to all such documents, securities, contracts, transfers, conveyances, leases, bonds, debentures, assignments, deeds and instruments entered into and executed on its behalf as it may deem necessary or in relation to all the purposes, affairs or matters in which the Association may be interested or concerned.
- f. Any Sub Committee appointed by the Board shall have powers only as the Board from time to time determines and the Board may, at any time revoke, alter or extend such powers.

- g. To form, amend or rescind such policies, by-laws, regulations and standing orders as may from time to time be deemed necessary for the purpose of regulating the affairs of the Association, including powers and procedures of any Committee or sub Committee provided however that such policies, by-laws, regulations and standing orders are not inconsistent with these Rules.
- h. All policies, by-laws, regulations and standing orders made, pursuant to Clause 11.2(g) shall be brought to the notice of Members by displaying the same in a conspicuous part of each kindergarten premises under the control of the Association at least one (1) calendar month before the same shall come into force.
- i. From time to time to borrow or raise money and secure payment of the same or to procure payment of any money owing by the Association for the satisfaction or performance of an obligation or liability incurred or undertaken by the Association in such manner as the Association shall determine and in particular by the issue of debentures or any mortgage or charge of lien upon the whole or any part of the Association's property or assets whether present or future.
- j. The Board may purchase, redeem or pay off security or securities. The Board may borrow from the Association bankers an overdraft or otherwise with or without security or securities provided.
- k. From time to time and for such period as it may think fit, to appoint honorary Solicitors and honorary Auditors and at any time in its absolute discretion to revoke any such appointment or appointments.

12 Association Employees

- 12.1 There shall at all times be an employee designated as the Chief Executive.
- 12.2 The Board shall appoint the Chief Executive and fix his/her remuneration.
- 12.3 The duties of the Chief Executive shall be determined by the Board.
- 12.4 The duties of all Association employees shall be determined by the Chief Executive where appropriate having regard to employment law.

13 Annual General Meetings

- 13.1 An Annual General Meeting will be held as soon as possible after the end of each financial year to receive and conduct the following business:

a. annual report including:

the Financial Report of the Association containing the annual statement of income and expenditure, a balance sheet containing a summary of the property and liabilities of the Association and a proposed budget for the ensuing year.
an election of Board members;
any other general business relevant to the affairs of the Association.

13.2 At least fourteen (14) days' notice of such an Annual General Meeting stating the nature of the business to be brought before the Annual General Meeting will be given by an advertisement in a public newspaper, circulating in the Taranaki area and by notice displayed at each member Kindergarten service.

13.3 The Association may elect a patron Honorary Solicitors and Honorary Auditors at any Annual General Meeting of the Association;

14 Special General Meetings

14.1 The Board may whenever it thinks fit and will when requested in writing by fifteen (15) or more members, convene a Special General Meeting.

14.2 A Special General Meeting shall be held not less than fourteen (14) days nor more than twenty-eight (28) days after the receipt of such written request.

14.3 Fourteen (14) days' notice of the date, time and place of the Special General Meeting and the purpose or general nature of the business to be discussed will be given by an advertisement in a public newspaper, circulating in the Taranaki area and by notice displayed at each Association Kindergarten.

14.4 The Board may whenever it sees fit call a Special General Meeting to handle change in policy and/or implementation of new education programmes that effect all the Association Kindergartens.

15 Pecuniary Gain

15.1 The funds of the Association shall be applied exclusively for the attainment of the objects of the Association. No portion of the funds shall be paid or advanced to members in any way except by way of bona fide remuneration to employees or agents or for services rendered or as reimbursement of expenses incurred on behalf of the Association.

16 Common Seal

16.1 The Association will have a common seal which will be in the custody of the Chief Executive. The seal will be affixed in the presence of the Chief Executive and one (1) member of the Board.

17 Accounts

17.1 The Board will cause true accounts to be kept:

- (a) of all sums of money received and expended by the Association and the matters in respect of which such receipts and expenditure takes place;
- (b) of all assets, credits and liabilities of the Association, including all mortgages, charges and securities of any description affecting any of the property of the Association.

17.2 All money and funds of the Association will be kept in the name of the Association.

17.3 Each bank account held by the Association will be operated on by any two (2) of four (4) people appointed by resolution of the Board for that purpose.

17.4 The Board on behalf of the Association will make the returns required by Section 23 of the Incorporated Societies Act 1908 or by such other statutory provisions for the time being in force dealing with such Associations or Societies.

18 Financial Year

18.1 The financial year will begin on 1 March and end on the last day of February (accounting for a leap year)

18.2 The Financial Statements of the Association shall be audited prior to the Annual General Meeting by a member of the New Zealand Society of Accountants

19 Rules

19.1 The Rules of the Association may be altered, added to or rescinded by a majority vote of not less than 75% of members present in person or registered to vote electronically at a General Meeting of the Association of which at least fourteen days' notice has been given by an advertisement in a public newspaper, circulating in the Taranaki area and by notice displayed at each Association Kindergarten.

19.2 For the purposes of complying with the requirements in maintaining the charitable status of the Association, no addition, alteration or rescission to the constitution may be made which will in any way affect the charitable status of the Association.

19.3 The Association will register any alterations in or additions to its rules as required by any statutory provisions for the time being in force.

20 Affiliation

20.1 The Association is and will remain affiliated to the New Zealand Kindergartens Association Inc until such time as a 75% majority of Members present and eligible to vote at a General Meeting resolve to end the Association's affiliation.

21 Winding Up

21.1 If on the winding up or dissolution of the Association there remains any property or funds whatsoever, after satisfaction of all debts and liabilities, the remaining property or funds shall be distributed as determined by the members of the association at or before the time of such winding up or in default of such disposition by the High Court of New Zealand. Provided, however, that such property or funds shall only be distributed to one or more early childhood organisations of a charitable nature having similar objects to the Association and operating within New Zealand at the time of winding up.

22 Interpretation

22.1 If at any time any matter shall arise which is not provided for in these Rules or in the interpretation of these Rules the same shall be determined where appropriate by the Board whose decision shall be final. The Board before determining any matter or matters may if it thinks fit take the advice of its solicitors and if the Board thinks fit act thereupon or refrain from acting thereupon in whole or in part.

23 Indemnification of Board Members

23.1 Subject to Clause 24.2 the Board may indemnify Board Members of the Association:

- a. For any costs that he or she incurs in any proceeding the relates to liability for any act done or omission made in his or her capacity as a Board Member of the Association and in which the Board Member is acquitted or judgment is given in his or her favour or which is

discontinued; and

- b. In respect of liability to any person other than the Association for any act done or omission made by a Board Member in his or her capacity as a Board Member of the Association, and all costs the Board Member incurs in defending or setting any claim or proceeding relating to any such liability; and
- c. this indemnity shall be subject to any limitations or terms contained in any deed or agreement from time to time in force between the Association and the Board Member relating to indemnities.

23.2 Any indemnity conferred by clause 24.1 shall not extend to any liability of the Board Member arising out of or in connection with:

- a. gross negligence or willful default; or
- b. willful or negligent failure to comply with any express instructions properly given by the Association or the Association's rules and objects;
- c. material breach of his or her employment contract with the Association;
- d. criminal liability;
- e. breach of the duty to act in good faith and in the best interests of the Association; or
- f. any other liability for which the giving of an indemnity is prohibited by law

Annexure 3

List of the Association Kindergartens as at the day of the approval of this constitution.

Avon Free Kindergarten
Bell Block Free Kindergarten
Brooklands Free Kindergarten
Devon Free Kindergarten
Eltham Free Kindergarten
Fitzroy Free Kindergarten
Frankleigh Park Free Kindergarten
Hawera Free Kindergarten
Inglewood Free Kindergarten
Kahikatea Free Kindergarten
Kaitake Free Kindergarten
Koromiko Free Kindergarten
Koru Free Kindergarten
Marfell Free Kindergarten
Merrilands Free Kindergarten
Ngamotu Free Kindergarten
Orapa Free Kindergarten
Patea Free Kindergarten
Pukekura Free Kindergarten
Puketapu Free Kindergarten
Stratford Central Free Kindergarten
Tawhiti Free Kindergarten
Waitara Central Free Kindergarten
Westown Free Kindergarten

The forgoing amended Constitution and Rules were adopted at the Annual General Meeting of the Association held on the 23rd day of October 2014.

Signed by)
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as a member of the Taranaki Free Kindergarten Association (Incorporated)

Signed by)
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as a member of the Taranaki Free Kindergarten Association (Incorporated)

Signed by)
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as a member of the Taranaki Free Kindergarten Association (Incorporated)

